

EXHIBIT A

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August 30, 2022

VIA EMAIL ONLY (INFO@APOLLOCORP.COM)

Mr. Charles Wachsberg, CEO
Mr. Richard Wachsberg, Chairman
Apollo Health and Beauty Care, Inc.
Rwachsberg Holdings Inc.
1 Apollo Place
Toronto, Ontario CANADA M3J 0H2

Re: NOTICE OF TRADE DRESS INFRINGEMENT
Our Client: Sol de Janiero
Infringing Product: Nutrius® Brazilian Body Butter Cream™

Dear Sirs:

This firm represents Sol de Janeiro USA, Inc. and Sol de Janeiro IP, Inc. (collectively, "SDJ") in connection with intellectual property matters in the United States. SDJ owns many registered and unregistered trademarks in the United States and throughout the world. Most important for the purposes of this letter, SDJ owns the U.S. trademark BRAZILIAN BUM BUM for its body cream products ("BRAZILIAN BUM BUM Trademark") and owns U.S. Registration No. 5,640,212 therefore.

SDJ has been marketing and selling its BRAZILIAN BUM BUM® body cream products in very distinctive packaging, comprised of a bright yellow round tub with a white oversized cap/lid, and the product name printed in black around the outside of the cap/lid ("SDJ Trade Dress"). SDJ has used this distinctive SDJ Trade Dress openly, notoriously, and continuously since its launch of the product line in 2015. An SDJ product with the SDJ Trade Dress is show below.



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As a result of SDJ's extensive marketing and advertising for this product line and its tremendous commercial success and goodwill, the SDJ Trade Dress has developed secondary meaning in the marketplace. This means that based on the trade dress alone, consumers identify the product itself and that it originates from SDJ. Thus, the SDJ Trade Dress has become a very valuable and important asset to SDJ and which SDJ vigorously protects.

SDJ recently became aware that Apollo Health and Beauty Care and/or Rwachsberg Holdings Inc. (collectively "Apollo" or "you") is marketing and selling a body cream product online via Costco.com, Walmart.com, Amazon.com, and other websites, as well as at Costco retail stores, called "Nutrius® BRAZILIAN BODY BUTTER CREAM™." The trade dress for this product is nearly identical to the SDJ Trade Dress, and is shown below ("Infringing Trade Dress").



The Infringing Trade Dress incorporates the SDJ Trade Dress that has become so well known in the marketplace in connection with SDJ's BRAZILIAN BUM BUM and indicates SDJ as the single source of these products. Moreover, Apollo is using the Infringing Trade Dress in for a body cream ("Infringing Product"), a product legally identical for trademark purposes to SDJ's product. In so doing, Apollo is creating a likelihood of consumer confusion -- at point of purchase, both online and in-store, customers for body cream products are likely to be confused regarding the origin of the Infringing Products and mistakenly believe that they originate from SDJ, are licensed by SDJ, and/or that there is an affiliation or sponsorship between Apollo and SDJ.

This copying does not appear to be a coincidence, as there are many other colors and color combinations available and used by SDJ's other competitors. Apollo's reversal of the bright yellow and white colors for the tub and lid is of minimal significance, and it also uses black lettering around the lid. As with a word mark, the trade dress need not be identical to infringe; it need only be similar enough to create a likelihood of confusion, as consumers' memory is imperfect. Similarly, there are many other container shapes that Apollo could have used, as also evidenced by competitors' products. The SDJ Trade Dress, including both the color combination and shape, is well-known and the SDJ product is a market leader. Apollo is misappropriating the value and goodwill that SDJ has created in its SDJ Trade Dress and its SDJ BRAZILIAN BUM BUM body cream products.

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Moreover, even the product name, BRAZILIAN BODY BUTTER CREAM™, is similar in appearance to our client's product name BRAZILIAN BUM BUM® CREAM, as both include "Brazilian B___ B___ Cream". While not necessarily independently infringing, the product name increases the likelihood of confusion when combined with the Infringing Trade Dress, rather than reducing it. In addition, while the trademark NUTRIUS® also appears, it is significantly smaller than the product name.

Apollo's use of the confusingly similar trade dress constitutes trade dress/trademark infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

Section 43(a) provides, in relevant part, that

(1) Any person who, on or in connection with any goods or services . . . uses in commerce any word, term, name symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is likely to be damaged by such act.

Given Apollo's trade dress is nearly identical to that of SDJ, Apollo's use is infringing as it is likely to cause confusion, mistake, and deception among the purchasing public. Specifically, consumers are likely to believe that there is some connection, association, or sponsorship between Apollo's BRAZILIAN BODY BUTTER CREAM™ product and SDJ's BRAZILIAN BUM BUM® CREAM products.

In fact, there has been actual consumer confusion. Our client has been contacted by consumers and prospective consumers inquiring about the availability of its product at Costco, both in stores and online. While not necessary, evidence of actual confusion is the best evidence to prove that confusion is likely.

In sum, Apollo's BRAZILIAN BODY BUTTER CREAM™ product in the above-described trade dress infringes the SDJ Trade Dress. This infringement has damaged and will continue to damage SDJ's sales, goodwill and reputation, unless stopped. Were SDJ to pursue a civil action against Apollo in a U.S. federal court to address this infringement, SDJ likely would be entitled to a permanent injunctive and significant money damages, comprised of Apollo's profits and/or SDJ's damages, pursuant to Sections 35 and 43 of the Lanham Act, 15 U.S.C. §§ 1117 and 1125.

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That said, SDJ would prefer to resolve this matter amicably and without resort to litigation, if possible. In this regard, we demand that Apollo immediately take steps to discontinue all use of the Infringing Trade Dress, including, but not limited to, discontinuing the manufacture, distribution, and sale of the Infringing Products both in-store and online, and confirm to us in writing **within ten (10) business days** from the date of this letter that such actions have been undertaken. SDJ may be willing to allow a reasonable sell-off period if Apollo immediately agrees in writing to the discontinue all use of the Infringing Trade Dress thereafter. Please note that some of the retailers mentioned above (Costco and Walmart) are copied on this letter.

In the event that we do not receive a timely and satisfactory response from Apollo and/or Apollo does not immediately discontinue use of the Infringing Trade Dress and sale of the Infringing Products, we have been instructed to take whatever legal action is deemed necessary and appropriate to protect our SDJ's valuable trademark rights, without further notice. This may include action against Apollo as well as one or more of its retailers/distributors.

This letter is written without prejudice to any of client's rights or remedies, all of which are expressly reserved. Thank you.

Sincerely,

Nolte Lackenbach Siegel

Cathy E. Shore-Sirotin
Cathy E. Shore-Sirotin
For the Firm

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Sol de Janeiro